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AMO'S RESPONSE TO: BILL 143: AN ACT RESPECTING THE MANAGEMENT OF WASTE IN THE GREATER TORONTO AREA AND TO AMEND THE ENVIRONMENTAL PROTECTION ACT

Association of Municipalities of Ontario

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MISSION STATEMENT

AMO unites Ontario's municipalities.

We take pride in promoting, supporting and enhancing strong and effective municipal government.

We provide strategic leadership by:

- developing and effectively promoting responsive quality policy;
- informing and educating governments, the media and the public;
- marketing innovative and beneficial services.

Our elected representatives, municipal officials and association staff form a team which values and respects:

- diversity and local autonomy;
- fairness and equity;
- consultation;
- consensus;
- co-operation.

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EXECUTIVE SUMMARY

On October 24, 1991, the Minister of the Environment, the Honourable Ruth Grier, introduced Bill 143: An Act respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act into the Ontario Legislature for first reading. At the time, the Minister planned to have the entire Act passed before December 19, 1991, when the house was expected to end its 1991 legislative session.

The Association of Municipalities of Ontario (AMO) and its member-municipalities were concerned about this because the legislation had serious financial and legislative implications for all Ontario municipalities. The provincial government also had not consulted with municipalities before Bill 143 was introduced and, if the Minister had passed the Act in the time-frame she intended, municipalities would have had no opportunity to comment on it.

AMO lobbied to have this Act discussed in public hearings so municipalities and the public could comment on it and it is pleased that those hearings are being held. It has prepared this response to present to the Minister of the Environment and Minister of Municipal Affairs in its January 21, 1992 AMO-provincial consultation. It has also prepared it to present municipalities' concerns to the Ontario Legislature's Standing Committee on Social Development on January 22, 1992.

AMO's response has six sections. The introduction, AMO's response, and background provide an overview and background on Bill 143 and AMO's response to it. The synopsis of the bill provides a brief overview of the bill. The section on municipal concerns looks at the lack of consultation, the need for a general waste management act, which municipalities are in crisis, waste management jurisdiction, funding, the Environmental Assessment Act, the Minister's preferences, injurious affection, and packaging. In the conclusion, AMO offers a summary of AMO's position.

AMO's position is that it first wishes to emphasize that since municipalities are the local level of government and because they are responsible for solid waste management, they should have been consulted before the provincial government introduced Bill 143 into the Ontario Legislature. The provincial government, as AMO recommends, should adopt

consultation with municipalities as a standard practice for all environmental legislation, policies and regulations which may be introduced and which will impact municipalities. This consultation should take place before the legislation, policies or regulations are introduced.

AMO also recognizes that some action must be taken for the Region of Peel's Britannia landfill since its capacity will be filled before the end of June 1992. However, the two other municipalities cited in Bill 143 do not consider themselves to be in "crisis". AMO would thus prefer that the Minister now work with it on a new waste management act which would address the waste management and landfill problems faced by all municipalities - and not just three in the Greater Toronto Area. This new waste management act should replace the Environmental Assessment Act process for landfill sites and would apply equally and fairly to all Ontario municipalities.

In the event that the provincial government does not take this preferred course of action and instead proceeds with Bill 143, AMO has made 18 other recommendations for changes to Bill 143. These recommendations address a wide range of questions ranging from legislative authority to funding, and it is critical that they be settled before Bill 143 becomes law. However, AMO again stresses that it does not favor this latter route and it strongly urges the Minister of the Environment to take the time now to work in consultation with AMO to develop a proper waste management act which will serve both provincial and municipal governments well as they work with solid waste management in Ontario in the years to come.

1 INTRODUCTION

On October 24, 1991, the Minister of the Environment, the Honourable Ruth Grier, introduced Bill 143: An Act respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act into the legislature for first reading. At the time, the Minister planned to have the entire Act passed before December 19, 1991, when the house was expected to end its 1991 legislative session.

The Association of Municipalities of Ontario (AMO) and its member-municipalities were concerned about this for several reasons. First, the provincial government did not consult with municipalities before Bill 143 was introduced. Having such a consultation was important because while some sections of the Act pertained only to three Toronto-area municipalities, others had wide-spread financial and legal implications for municipalities all across Ontario. Second, when the Act was introduced, municipalities could not comment because they were in the midst of their municipal elections. They needed more time than the Minister was allowing to provide important municipal input to the development of this Act. Third, on review of the Act, it became apparent that not only did several points need to be changed in the Act, but other philosophical directions needed to be introduced to the legislative debate in order to provide Ontario with the best possible waste management legislation.

AMO lobbied to have this Act discussed in public hearings. It did so for two reasons. One was that because there had been no public consultation on the Act before it was introduced, AMO believed this debate was necessary to improve the legislation which had been brought forward. The other reason was that the hearings were necessary to provide municipalities with an opportunity to comment on this legislation. Without the hearings, municipalities would have had no opportunity to comment on an Act which could severely impact their future in solid waste management.

AMO has developed this response to present to both the Minister of the Environment at the January 20, 1992 AMO-provincial consultation meeting and to the Ontario Legislature's Standing Committee on Social Development in its public hearings on the Act. AMO appreciates the

opportunity to make these presentations about Bill 143: An Act respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act. Since municipalities are a level of government which will continue to be involved in delivering the waste management services, their input is very important to this Act and its surrounding issues.

2 AMO'S RESPONSE

AMO's Response To: Bill 143: An Act Respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act has several sections. It provides a background of the work which AMO has done to respond to this Act and a synopsis of Bill 143. The rest of the paper then addresses topics according to their themes, an approach which AMO has adopted to avoid duplication of comments. In this way, AMO's response addresses several municipal concerns regarding the Act, including lack of consultation, the need for a waste management act, a comment on municipalities in crisis, and a large section on waste management jurisdiction. The response also provides comments on funding, the Environmental Assessment Act, the Minister's "preferences", injurious affection, and packaging.

While AMO's response is structured in this format, AMO has an overall comment which may help to put its response in a general perspective. While AMO has not targeted most of Parts I and II of the Act for specific changes, it believes that the existence of the powers introduced in these parts - as well as the overrides on many other acts in Part III - means that the provincial government is admitting that the environmental assessment process as it now exists does not work for waste management and siting landfills. Since the provincial government has made this admission through the introduction of these parts, AMO urges it now to address that fact in a waste management act which deals fairly and equally with all of the municipalities in Ontario. The current legislation, which only addresses that problem for three municipalities in the Greater Toronto Area and ignores the problems faced by other Ontario municipalities, is not acceptable.

If passed, Part III of Bill 143 would mean both municipal agreements and many other laws regarding the siting of, and environmental assessments for, landfills could be overridden by the provincial government. For this Part, AMO points out that the Regional Municipality of Peel is the only municipality named in Bill 143 which is currently facing a crisis with its Britannia Sanitary Landfill. Recent figures confirm that the Regional Municipality of Durham and the Municipality of Metropolitan Toronto do not have "crises" for their landfills named in this Act. In fact, many other municipalities - such as the City of Kingston and the Regional Municipality of Halton - are facing as much "crisis" as most of those named in this Act. Because of this fact, AMO is concerned that the Minister of the Environment is setting aside all of the protective legislation when only one landfill which is named is facing a crisis. It urges the province not to proceed in this fashion.

In Part IV of the Act, AMO has several specific concerns which it addresses in this response. There are, for example, several sections which, if passed, could give control of municipal waste management systems and the financing of these to the provincial government. Recommendations for amendments have been made throughout this paper and these are submitted to both the Minister of the Environment and the Ontario Legislature's Standing Committee on Social Development for their consideration.

AMO appreciates the fact that the provincial government changed its position of planning to pass the Act before the end of 1991 so the hearings and some consultation could take place. AMO believes that by working together and continuing the extensive consultation and rapport the Ministry of the Environment and AMO have developed over the past year, and making the changes which AMO suggests, the provincial and municipal governments will both be much happier with the resulting waste management legislation.

3 BACKGROUND

On October 24, 1991, the Minister of the Environment, the Honourable Ruth Grier, introduced Bill 143: An Act respecting the Management of Waste in the Greater Toronto Area and to amend the Environmental Protection Act into the legislature for first reading. The provincial government

originally intended to complete hearings and third reading of all of the bill before the legislature rose on December 19, 1991.

AMO attempted to convene an early November meeting between the Ministry of the Environment (MOE) staff and municipal representatives to discuss Bill 143. Because a municipal election was on, that was not possible. AMO thus wrote on November 1, 1991 to the Minister of the Environment to ask that Bill 143 not proceed until extensive consultation could take place with AMO and Ontario municipalities.

The legislature began second reading of the bill on November 19, 1991. On November 27, 1991, representatives from AMO's Ad Hoc Waste Management Committee met with a delegation from the MOE, the Minister of the Environment's staff, and the Ministry of Municipal Affairs and expressed their concerns about the bill and its impact on municipalities. AMO repeatedly asked that passage of the Act be delayed until an extensive consultation on it could take place with municipalities. The province's delegation said the Act must be passed before the end of this year to provide the framework for the province to reach its waste reduction target of 25 per cent by the end of 1992. It indicated at that time that there was little hope of making any changes to the legislation.

On November 28, 1991, MOE staff - on the authority of the Minister - agreed to meet with AMO and "clarify" concerns which municipalities had about the Act. If AMO still had concerns about the Act after those meetings, the MOE said AMO's representatives could meet immediately with the Minister. At that time, the Minister still planned to pass all of the Act by December 19, 1991.

On November 28, 1991, AMO's Executive Committee approved a news release on AMO's position regarding Bill 143, also known as the Waste Management Act. The release included a 12-page memo on "AMO's Comments on the Waste Management Act", which has been incorporated into this response. At the time, AMO re-iterated its position that the Act should not proceed until extensive and wide-ranging consultation on it could take place with municipalities. AMO said time for this consultation could be gained by withdrawing the Act until a full municipal consultation had taken place, or by referring the bill to a standing committee of the legislature for a period of not less than five weeks so

that a full hearing of public, municipal and industrial submissions may take place. Both positions would allow municipalities to comment on the Act.

By December 3, 1991, the provincial government was discussing separating Part III from the rest of the bill and sending it, along with the proposed regulations, contained in the MOE's Initiatives Paper No. 1, Regulatory Measures to Achieve Ontario's Waste Reduction Targets, to longer committee hearings, and passing Part III in early 1992. Because of that possibility, a small group of AMO representatives met with another delegation from the MOE, the Minister of the Environment's staff, and the Ministry of Municipal Affairs on December 3, 1991. AMO made it clear that this meeting could only present some municipal concerns. It could not represent any sector of AMO since AMO had not had time to set an official position on the Act. The group spent the day discussing the municipal concerns regarding the Act which AMO had been able to identify through analysis, conversations, and faxes from municipalities.

Meanwhile, AMO lobbied the Minister of the Environment and Minister of Municipal Affairs, their staffs, and both opposition parties not to proceed with the bill until extensive consultation could take place with AMO and Ontario municipalities. AMO's position continued to be that time for this consultation could be gained by withdrawing the Act until a full municipal consultation had taken place, or by referring the bill to a standing committee of the legislature for a period of not less than five weeks so a full hearing of public, municipal and private sector submissions could take place. Both positions would have allowed municipalities to comment on the Act.

On December 5, 1991, it appeared that the province would agree to send all of the Act to committee hearings in early 1992. That position was confirmed when the Act received second reading on December 10, 1991. By that time, the provincial government had agreed to hold five weeks of hearings on the Waste Management Act, 1991. These were to occur in January and February 1992, with three weeks of public hearings in the Greater Toronto Area (GTA), one week of hearings outside of the GTA, and one week of clause-by-clause hearings, where amendments to the Act could be introduced. That process is now underway and AMO anticipates that legislation concerning this topic may

be introduced into the Ontario legislature soon after it is reconvened on March 23, 1992.

4 SYNOPSIS OF THE BILL

The Waste Management Act, 1991 has four sections:

- Part I continues the Interim Waste Authority Ltd. (IWA) as a Crown Corporation and gives it powers to: enter on land and do inspections, and expropriate land to establish landfill sites.

- Part II limits the scope of the landfill site searches, and the environmental assessment required for them, which the IWA must conduct for three landfill sites in the Greater Toronto Area (GTA).

- Part III requires the regional municipalities of Durham, Peel, and Metropolitan Toronto to implement the reports which the Minister of the Environment has already issued regarding these three sites. This means the Region of Peel and Metro Toronto are to extend the life of the Britannia Road and Keele Valley landfill sites, and the Region of Durham is to operate a transfer station.

  This part also gives the IWA the legislative authority to do this by exempting the sites from several other acts - including the Environmental Assessment Act, Environmental Protection Act (EPA), the Planning Act, Municipal Act, the Municipal Board Act - and all other legally-binding agreements which exist between municipalities. This part of the bill also changes the rules of the EPA to eliminate public hearings.

- Part IV contains amendments to the Environmental Protection Act, which:

  - broaden the province's authority to order municipalities to collect waste, establish or extend waste management systems or waste disposal sites and to discontinue and close them;

  - allow municipalities to be ordered to collect or transport waste from sources outside their boundaries and to accept, process, or otherwise deal with waste, including waste from sources outside their boundaries;

- broaden the Ontario Cabinet's power to regulate waste management systems and waste disposal sites. This includes the control of municipal financial management and the manner in which financial information is communicated to the public by municipalities;

- provides the province with substantial control over the sale of disposable products and products that pose waste management problems.

5 MUNICIPAL CONCERNS

5.1 LACK OF CONSULTATION

When the Minister of the Environment introduced Bill 143 into the legislature for first reading on October 24, 1991, she planned to have the entire Act passed before December 19, 1991, when the house was expected to end its 1991 legislative session. The bill was introduced with no prior notice to, or consultation with, municipalities or AMO. It was also introduced at a time when Ontario's municipal councils were not sitting because of elections. That also limited the type of post-introduction consultation which the provincial government could have conducted with municipalities in the time which it had allowed for the Act's passage.

AMO and its member-municipalities would have appreciated the opportunity to consult with the provincial government on the Act before it was introduced. That would have provided an opportunity for the province to work with the municipal sector to provide the best legislation possible in this area.

Over the past year, the MOE has consulted with AMO regarding the development of many of its initiatives. It did that for the MOE's Initiatives Paper No. 1, Regulatory Measures to Achieve Ontario's Waste Reduction Targets, and municipalities appreciated the fact they were able to provide input to those regulations. The MOE has also begun to consult with AMO on other critical waste management areas, such as the need for better defined waste management legislative authority, the cost of recycling and waste management systems, restructuring the waste management master plans, the development of a true-cost accounting system, and the development of the MOE's waste management information database. This consultation

during the development phase of policies, regulations and legislative frameworks has provided the province with important municipal input to initiatives which impact on them.

AMO has appreciated this growing rapport between municipalities and the MOE, and it believes the development of this partnership will lead to a better waste management system for all Ontario municipalities. It would thus urge the provincial government to adopt this as a standard practice for all waste management legislation, policies and regulations which will impact on municipalities. This consultation should take place before the legislation, policies or regulations are introduced.

AMO appreciates the fact that the Ontario Legislature's Standing Committee on Social Development now is holding hearings on Bill 143 and that municipalities are being given the opportunity to express their concerns about the Act. However, AMO also believes that the area being addressed in the legislation could have been much better addressed if there had been provincial-municipal consultation on it before Bill 143 was introduced to the legislature.

RECOMMENDATION #1:

The provincial government should adopt consultation with municipalities as a standard practice for all environmental legislation, policies, and regulations which may be introduced and which will impact on municipalities. This consultation should take place before the legislation, policies or regulations are introduced.

5.2 NEED FOR A GENERAL WASTE MANAGEMENT ACT

AMO and its member-municipalities have been saying for many years that the Environmental Assessment Act (EAA), the Waste Management Master Plan, and their accompanying processes do not work for the identification and siting of Ontario's landfills and for the field of waste

management. AMO believes that the province needs a new waste management act which is separate from the Environmental Assessment Act and which addresses solid waste management, including siting of landfills, for the province.

By introducing Bill 143, AMO believes the provincial government is already admitting that its environmental assessment process as it now exists does not work for waste management and particularly landfills. Bill 143 scopes the procedures which the province's Interim Waste Authority (IWA) will have to address in finding landfill sites for the three municipalities in the Greater Toronto Area so the IWA does not have to explore all alternatives, something which all other municipalities must do.

Bill 143 does this by overriding the EAA - as well as many other acts. This is apparent in Sections 17 (7) through (10) and Sections 18 (1) and (2) of Part III. These state that the provisions of Bill 143 override the Environmental Assessment Act, Planning Act, any agreements binding on a municipality, the Ontario Municipal Board Act, the need for hearings under the Environmental Protection Act, the various acts governing the municipalities and other acts which may govern them in this area.

It is also apparent in Section 14 (1) of Part II, where Bill 143 notes that an environmental assessment for a landfill waste disposal site is not required to contain:

- any description of, or statement of the rationale for any alternative to the landfill waste disposal site other than i) reduction in the amount of waste generated in the primary service area, ii) reuse or recycling of materials that are or could become waste, and iii) use of other single landfill waste disposal sites in the primary service area; or

- any description or evaluation of any matter relating to any alternative to the landfill waste disposal site other than, i) reduction in the amount of waste generated in the primary service area, ii) reuse or recycling of materials that are or could become waste, and iii) use of other single landfill waste disposal sites in the primary service area.

AMO has, over the years, identified problems with both the Waste Management Master Plan and Environmental Assessment Act and their processes and relayed these to the Ministry of the Environment. The MOE has begun to try to address some of the problems through its Waste Management Master Plan Initiatives Paper #2, which has not yet been released, and its Environmental Assessment Project Improvement Process (EAPIP). But while these processes are underway, the Minister of the Environment now has introduced Bill 143.

Although AMO believes that by introducing Bill 143 the province is admitting that the EAA process has failed, the province is only overriding the environmental assessment process for three municipalities in the Greater Toronto Area. Other municipalities around the province, including the Regional Municipality of Halton, County of Wellington, and the City of Kingston, are also experiencing similar, if not more serious, waste management and landfill siting difficulties. But they are not receiving similar treatment from the provincial government.

The result is that the provincial government, through Bill 143, is establishing one set of rules for three municipalities within the GTA and another set of rules for all other municipalities. Municipalities outside the GTA feel that providing the opportunity for waivers or exemptions from existing legislation for proposed landfill sites in the GTA is discriminatory, both in the timing and cost imposed on municipalities outside the GTA which have to live with existing legislation and regulations.

AMO believes that instead of Bill 143, which only deals with three municipalities, the provincial government should be addressing its ineffective environmental assessment and waste management planning processes in a holistic manner in a separate waste management act. This act should treat all municipalities equally and fairly. The current legislation, which addresses the problem for only three municipalities in the GTA and ignores the problems faced by other Ontario municipalities, is not acceptable. AMO urges the provincial government to work with it to develop a waste management act which will address all municipalities' waste management and landfill siting concerns in a fair and equitable manner. This act should be separate from the Environmental Assessment Act. This is important as solid waste is a unique field which deserves its own governing legislation.

RECOMMENDATION #2:

The provincial government should work with AMO to develop a waste management act, separate from the Environmental Assessment Act, which addresses solid waste management for all Ontario municipalities and which applies equitably and fairly to all Ontario municipalities.

5.3 WHO IS IN CRISIS?

AMO is not convinced that such a landfill "crisis" exists in all of the three GTA sites named in Bill 143 to warrant separate legislation governing only these municipalities.

During the November 27, 1991 meeting between representatives of AMO, the MOE, and the Minister of the Environment's staff, the Minister's staff noted that the only GTA landfill site in immediate crisis is the Britannia Sanitary Landfill Site in the Region of Peel. The Britannia site is scheduled to close in May or June of 1992. The Keele Valley landfill site in the Regional Municipality of York has benefitted from significant waste reduction and does not appear to be in a crisis situation at this time. In fact, the Municipality of Metropolitan Toronto's representatives say the Keele Valley site will not reach capacity until 1999. Data collected on the Brock West site in the Regional Municipality of Durham has likewise been encouraging and it now is believed that site will not close until 1996.

As noted above, representatives from many municipalities outside of the GTA have said their landfills will reach capacity before those for which this Act is being introduced. Since only one municipality in the GTA is immediately running out of landfill space, AMO and its member-municipalities have questioned the Minister of the Environment's need to introduce this legislation and then rush it through the Ontario Legislature.

During its November 27, 1991 meeting, AMO's representatives strongly suggested that the Minister deal with the Britannia situation through other measures and take the time to properly consult with municipalities on other aspects of the legislation before it is passed. Given the above

section, AMO's preference would be that the Minister deal with the Britannia situation while developing a new waste management act which applies equitably and fairly to all Ontario municipalities.

In the meantime, AMO urges the Minister of the Environment to define what constitutes a "crisis" in a waste management or landfill situation since two of the three landfills sited in Bill 143 are no longer in what their municipalities would consider a "crisis" situation.

RECOMMENDATION #3:

AMO is not convinced that a crisis exists in all of the three Greater Toronto Area sites identified in Bill 143 and, as such, it does not believe this legislation is thus warranted. AMO urges the Minister of the Environment to define what constitutes a "crisis" in waste management.

5.4 WASTE MANAGEMENT JURISDICTION

Bill 143 has raised two far-reaching concerns regarding waste management jurisdiction. First, it has raised many municipal concerns about the Minister of Environment's right to unilaterally assume responsibility for an area which has traditionally, and legally, been overseen by municipalities.

Second, it has also raised concerns about municipalities' legislative authority for waste management. This is an area which AMO, the MOE, and the Ministry of Municipal Affairs (MMA) have been studying for some time and which is the subject of a paper which the MMA plans to release early in 1992 as the basis for legislative changes in this area.

In the first case, while many of the sections of Bill 143 may at this time apply only to one municipality or all three GTA municipalities named in Bill 143, they set a precedent for the Minister to assume control of areas which have traditionally, and legally, been governed by municipalities.

This Ministerial assumption of powers in this area means that municipalities inside the GTA are concerned about what the Minister might do in other areas, such as sewer management, if she unilaterally deems it necessary. Municipalities outside of the GTA are also concerned about the wide-spread implications of this for all areas now under their jurisdiction.

Beyond that is the second concern that the Minister of the Environment has assumed these municipal powers with no prior consultation with municipalities. The question of legislative authority for waste management is one which the MMA is addressing in a paper on legislative reform for municipalities and waste management. AMO raised concerns about this area in its earlier reports, and the MOE and MMA worked through 1990 and 1991 to identify concerns and potential solutions in this area. The MMA's paper is to be released in early 1992 for discussion, but the legislative authority questions raised in Bill 143 are being raised separately without the benefit of municipalities first having seen the MMA's paper.

Since Bill 143 addresses several questions of waste management jurisdiction and legislative authority outside of the context of the MMA's paper, AMO believes Bill 143 should not be allowed to proceed until the MMA's paper on statutory authority for municipalities is presented to municipalities, has completed the consultation process, and the issues have been resolved. This would allow municipalities to understand the context in which all of these areas are to be addressed.

RECOMMENDATION #4:

The provincial government should not proceed with Bill 143 until the Ministry of the Environment and Ministry of Municipal Affairs' paper on statutory authority for municipalities: i) is presented to municipalities in early 1992, ii) has completed the consultation process, and iii) its issues have been resolved.

In the meantime, the questions of waste management jurisdiction and the imposition of the Minister's powers have been raised in several sections in Bill 143. What follows is a listing of those sections, as well as AMO's comments on, and recommendations regarding, some of the sections:

- In Section 17 (4), the Act says a regional or metropolitan municipality shall comply with this section even if to do so would require that the municipality: a) use, maintain, operate, establish, alter, improve, enlarge or extend a waste management system or waste disposal site located in another municipality; or b) dispose of waste generated in another municipality in a waste management system or waste disposal site that it owns, operates or controls.

  For this section, AMO urges the MOE to clarify the language in section 17 (4) so that it specifically states which municipality is being referred to in that section.

RECOMMENDATION #5:

The Ministry of the Environment should clarify the language in section 17 (4) so that it specifically states which municipality is being referred to in that section.

- In Section 23 (2), the Minister could k) establish and operate, use, alter, enlarge and extend waste management systems or waste disposal sites; and l) discontinue systems and close sites referred to in clause (k).

  Because municipalities believe Sections 23 (2) (k) and (l) gives the Minister more authority in the municipal arena and the MOE has said the Minister needs these clauses to have clear authority in this area, AMO has suggested to the MOE that (k) be amended by adding "in the absence of suitable alternatives" at the end of the phrase and before "; and".

RECOMMENDATION #6:

The Ministry of the Environment should amend Section 23 (2) (k) of Bill 143 by adding "in the absence of suitable alternatives" at the end of the phrase and before "; and".

- In Section 26 in Part IV, which repeals Section 29 of the Environmental Protection Act (EPA) and replaces it with Section 29 (1), Bill 143 says that an MOE Director may, if it is considered to be in the public's interest, order a municipality to: collect waste; to establish, maintain, operate, improve, extend, enlarge, alter, repair or replace a waste management system or waste disposal site; discontinue a waste management system; or close a waste disposal site.

  In this section, AMO believes the new Section 29 (1) should have the word "Director" replaced by the word "Minister". That would mean the powers in this section can only be exercised by the Minister, and that would only occur in unusual circumstances.

  AMO has recommended this because although the MOE has said that having the "Director" exercise these powers would allow municipalities to appeal the Director's decision to the Environmental Assessment Board, municipal representatives say they do not want to be in the position of having to constantly put their time and money into appealing Directors' decisions. They also do not want to be in a position where six regional MOE directors across the province make different interpretations about the same situation. If the Minister made a ruling, it is more apt to be consistent for all Ontario municipalities.

  During AMO's meeting with the Minister of the Environment's staff, the staff noted that this change would result in more political accountability. It also said that concerns had been raised with the Minister about this issue in this section and the Minister was considering a possible change in keeping with AMO's request.

RECOMMENDATION #7:

In Section 26 of Bill 143, which repeals Section 29 of the Environmental Protection Act and substitutes a new Section 29, the Ministry of the Environment should replace the word "Director" with the word "Minister" in section 29 (1).

- Section 26 in Part IV, which repeals Section 29 of the EPA and replaces it with 29 (2), where Bill 143 says an order under subsection (1) may require a municipality to: a) collect or transport waste as specified in the order, including waste from such sources outside the boundaries of the municipality; b) accept, process or otherwise deal with such waste as is specified in the order, including waste from such source outside the boundaries of the municipality, in a waste management system or at a waste disposal site located in or owned, operated or controlled by the municipality; and c) assess a municipality's waste management needs to prepare plans addressing those needs, to seek any approval required for a plan or the implementation of a plan and to implement the plan.

  In section (29) (2), as noted above, Ontario municipalities have concerns with several points. First, some feel that the powers which could be exercised under (29) (2) (b) are not warranted. But, if they are exercised as noted in this section, the capacity used must be replaced at no additional cost to the host municipality. The same principle should also be applied any time the powers are exercised - for any uses ranging from processing to the use of a municipality's landfill.

RECOMMENDATION #8:

If the Minister of the Environment exercises the powers noted in Section 26 of Part IV of Bill 143, which repeals Section 29 of the Environmental Protection Act and replaces it with Section 29 contained in Bill 143, the capacity used through the exercise of Section (29) (2) (b) must be replaced at no additional cost to the host municipality. The same principle should also be applied any time the powers are exercised - for any uses ranging from processing to the use of a municipality's landfill.

In the same section, municipalities believe parts (2) (a) and (b) involve situations which may be necessary in an emergency, but part (c) is not. AMO urges the Ministry of the Environment to either delete section c) if it is not directly applicable to an emergency situation or, if it is, rephrase it in language so that it specifically applies only to an emergency situation.

RECOMMENDATION #9:

In Section 26 in Part IV of Bill 143, which repeals Section 29 of the Environmental Protection Act and replaces it with Section 29 of Bill 143, the Ministry of the Environment should change the language of (29) (2) (c) so that it specifically applies only to an emergency situation.

- In Section 33 (1), Bill 143 broadens the province's scope for making regulations relating to waste management. Under this Act, the province would have authority to do this for: (d) governing the management of waste and prescribing requirements for waste management systems and waste disposal sites in relation to, i) planning, design, siting, buffer zones, public notification and consultation, establishment, insurance, facilities, staffing, operating, maintenance, monitoring, record-keeping, submission of reports to the Director and improvement, ii) the discontinuance of systems, and iii) the closure of sites.

In Section 33 (1) (d) (i), the MOE has added the word "planning" to the powers which the Minister can direct. The MOE said this is necessary to allow the Minister to require that a plan be done and how it can be done.

AMO does not believe this is necessary and it recommends that planning be deleted from this section.

RECOMMENDATION #10:

The Ministry of the Environment should delete the word "planning" from Section 33 (1) (d) (i).

In Section 33 (1) (d) (ii) and (iii), the MOE should amend the section to clarify that it can set technical specifications for these tasks of discontinuing the systems and closing the sites.

AMO also emphasizes that standards needed for municipalities in the Greater Toronto Area should not automatically become necessary for dissimilar situations in northern and rural Ontario. AMO urges the MOE to consult with it on these before regulations under this section are introduced.

RECOMMENDATION #11:

In Section 33 (1) (d) (ii) and (iii) of Bill 143, the Ministry of the Environment should:

a) amend the section to clarify that it can only set technical specifications for these tasks of discontinuing the systems and closing the sites; and

b) consult with AMO before regulations under this section are introduced.

- In Section 33 (2) of Bill 143, this amendment would increase the regulation-making powers of the provincial government in relation to waste management. Under it, the province can make regulations regarding a wide variety of areas, as noted in the list in Bill 143.

  In Section 33 (2) (j), there are two points. The first involves funding and the second regards notification of the public regarding the costs of funding municipal waste management.

  AMO believes funding of waste management is a municipal issue and this section could have a far-reaching impact on municipalities and the financing of their waste management systems. Section 33 (2) (j) is too broad and thus too intrusive on an area which is traditionally municipally-administered. In this section, the MOE also assumes power in this traditionally municipal area by saying the province will "govern" the manner in which municipalities carry out the financial management of their waste management activities. For these reasons, AMO recommends that Section 33 (2) (j) of Bill 143 be deleted.

RECOMMENDATION #12:

The Ministry of the Environment should delete Section 33 (2) (j) of Bill 143.

- In Section 33 (2) (k) through (t) of Bill 143, municipalities have two major concerns. First, if it is clarified that the Minister is the ultimate authority, the clauses might be more acceptable to municipalities. However, under the current legislation, municipalities still have jurisdiction over waste management and any directions from the Minister - or the MOE - should only be given in consultation with, and agreement by, municipalities. This is important since municipalities are elected bodies responsible for waste management - both planning and execution - in their jurisdictions. Thus, the Minister's directions must fit the municipalities' overall plans for waste management in their areas.

- A final concern which AMO wishes to raise under this topic is regarding the definitions of "waste", "waste disposal site" and "waste management system". Under Bill 143, these are much broader than what previously existed in the Environmental Protection Act. Arrangements for the management of waste now are also part of the system.

5.5 FUNDING

Municipalities are concerned that the provincial government has taken no responsibility under Bill 143 for the financial impact on municipalities of meeting the Minister's requirements.

This is true on several fronts. First, the province has not addressed any financial questions, such as what level of government will be responsible for which aspect of the implications of this bill or how municipalities will fund the portions required of them. This question also applies to such items as who will pay for insurance liability.

Secondly, AMO is also concerned about the funding issue because the MOE is expected to release another Initiatives Paper on "Who Pays" for waste management in early 1992. AMO has repeatedly said to the Minister of the Environment and her staff that municipalities cannot complete their responses on Bill 143, its regulations, or other parts of the waste management system which the province is trying to introduce without the MOE first releasing its position on the financial arrangements which will be required.

RECOMMENDATION #13:

The Minister of the Environment should release the Ministry of the Environment's Initiatives Paper on financing the waste management system before Bill 143 proceeds so municipalities may understand all of the financial implications of the proposed changes before they are introduced.

Thirdly, neither Bill 143 nor the MOE's Initiatives Paper on "Who Pays" appears to have any relationship to the "disentanglement" process which AMO and the provincial government are conducting to examine and re-align the financial responsibilities of the provincial and municipal levels of government in Ontario. That process is currently being started and the municipal-provincial discussions regarding funding waste management should be set in that context.

RECOMMENDATION #14:

The funding arrangements for the provisions of Bill 143 and all subsequent municipal-provincial waste management provisions should be set in the context of the AMO-provincial disentanglement process.

Beyond these points, AMO says that Minister of the Environment should define the funding mechanism for the Interim Waste Authority. This should be done before further work proceeds on the legislative requirements in this area.

RECOMMENDATION #15:

The Minister of the Environment should define the funding mechanism for the Interim Waste Authority.

5.6 ENVIRONMENTAL ASSESSMENT ACT

In Bill 143, Sections 17 (7) through (10) and Sections 18 (1) and (2) of Part III state that the provisions of this bill override the Environmental Assessment Act, Planning Act, any agreements binding on a municipality, the Ontario Municipal Board Act, the need for hearings under the Environmental Protection Act, the various acts governing municipalities in this area.

AMO is concerned about Bill 143's override of all of these acts and agreements. Particularly, AMO is concerned about:

- the consequences of the provincial government being able to unilaterally rule that agreements binding on a municipality can be overridden by provincial legislation. This action could have very far-reaching implications for municipalities.

- the removal of citizens' and municipalities' rights, which sets a dangerous precedent for Ontario because these sections remove every protection available under the Environmental Assessment Act, the Environmental Protection Act, the Municipal Act, the Planning Act, the Ontario Municipal Board Act, and any other legally binding agreement which may be in place, without providing any alternative.

  AMO is particularly concerned about this point as it also appears to contradict this provincial government's own concern for citizens' rights.

  While a new waste management act, as AMO has proposed earlier in this response, would surely address this concern, that is not yet available.

AMO is also concerned about the "Notice" in Sections 18 (3) through 18 (6). These sections of Bill 143 spell out the conditions under which notices must be sent out before a certificate or provisional certificate of approval is issued or amended. The bill states that the Director is to send the notice to the regional or metropolitan municipality, area municipality where the site is located, and to the public. The Director is then to place an advertisement which says where a site is to be located. Submissions regarding this notice can then be made to the Director in writing within 21 days.

AMO believes 21 days is not enough time for either a municipality or the public to be able to respond to the Director's notice. The time should be extended.

RECOMMENDATION #16:

The Ministry of the Environment should extend the amount of time which municipalities or the public have to respond to the notice in Section 18 (6) of Bill 143.

5.7 MINISTER'S PREFERENCES

No incineration or transportation of solid waste

In Section 14 (2) (a) of Part III, Bill 143 says the environmental assessment does not have to contain information relating to any alternative "if that alternative would involve incineration of waste or the transportation of waste from the primary service area to any other area".

AMO is concerned that this section enshrines the Minister's preferences in law without these having any empirical justification. The Ministry of the Environment should provide empirical justification for the deletion of the options of incineration and transportation of solid waste in Section 14 (2) (a) of Part III of Bill 143. If this cannot be provided, these deletions should be omitted from the bill.

RECOMMENDATION #17:

The Ministry of the Environment should provide empirical justification for the deletion of the options of incineration and transportation of solid waste in Section 14 (2) (a) of Part III of Bill 143. If this cannot be provided, these deletions should be omitted from the bill.

Minister's estimates

In Section 13 (1) of Part II, Bill 143 says that for each of the three GTA landfill sites, the Minister of the Environment shall provide the Interim Waste Authority (IWA) with a written estimate of the amount of waste which could be generated in the primary service area over 20 years, but which:

- will not be generated because of waste reduction efforts; and
- will not need to be disposed of in the site because of the reuse or recycling of materials that are or could become waste.

In Section 13 (2), the Act says that when it is determining the required capacity of a landfill waste disposal site, the IWA must use the Minister's estimates.

AMO is concerned about this section because the MOE does not currently have an accurate database of this information. AMO is also concerned because what the Minister and her staff hope to achieve in waste reduction may be more optimistic than the actual percentages achieved by the waste reduction. That could result in the required landfill space filling sooner than projected.

In Section 13 (2) of Bill 143, the Minister of the Environment should thus use estimates provided by the municipality since the Ministry of the Environment does not yet have an accurate database of this information.

RECOMMENDATION #18:

In Section 13 (2) of Bill 143, the Minister of the Environment should use estimates provided by the municipality since the Ministry of the Environment does not yet have an accurate database of this information.

5.8 INJURIOUS AFFECTION

Section 19 (1) in Part III of Bill 143 says that if, as a result of a municipality complying with the Minister's reports on one of the three GTA landfill sites, a person's land is injuriously affected by a new, altered, enlarged or extended waste disposal site located on land which was not expropriated from that person, the person is entitled to compensation for injurious affection in the same way as if the municipality had expropriated land from the person.

Municipalities are concerned about the impact of this section because of:

- potential claims in present legal cases, and
- potential claims which may develop regarding alleged business losses suffered by the development industry around the site. This could mean a new contingency liability for a municipality, but the scope of that liability is unknown because the section's wording is uncertain. This could impose another serious funding hardship on municipalities.

AMO and many of its member-municipalities are also concerned about this section as it could be applied to other municipalities which may find themselves in a similar situation. It has thus asked the Ministry of the Environment to change this section in consultation with AMO and its member-municipalities.

RECOMMENDATION #19:

The Ministry of the Environment should amend change Section 19 of Bill 143, the section dealing with Injurious Affection, in consultation with AMO and its member-municipalities to reflect municipal concerns.

5.9 PACKAGING

Containers

In Section 33 (3) to (11), the province has provided regulation-making powers relating to beverages sold in containers, but these sub-sections would allow it to exercise those powers for any products sold in containers. The province would also have broader powers to require placement of notices or marks on containers.

AMO favors this move if it leads to the increased use of refillable containers.

Packaging Posing Waste Problems

In Section 33 (12) of Part IV, the Act proposes to amend Part VIII of the Environmental Protection Act to provide the province with the power to regulate content, sale and use of packaging, containers, disposable products and products which "pose waste management problems". The province could require that these items be reusable or recyclable.

There is no test for "products which pose waste management problems", so how would the MOE, for example, determine whether or not a disposable diaper poses a problem? This area must be more clearly defined before it is applied to such a broad area.

During its December 3, 1991 meeting with AMO, the MOE said it did not wish to define packaging "posing waste problems" in the Act. It preferred to do this in the regulations so these could be changed faster. At the time, the MOE said this section applied to such items as white goods, and municipalities would be consulted before a regulation on this area would be changed to include other items.

AMO expressed the concern that while it believed the current MOE staff would likely continue to consult with AMO and municipalities, it could not be assured that this

would continue - particularly if the Minister or government changed. AMO has thus recommended that the Ministry of the Environment should work with municipalities to clearly define the clause "posing waste problems". The phrase should not be placed in legislation until that has occurred and a clear definition can accompany it.

RECOMMENDATION #20:

The Ministry of the Environment should work with municipalities to clearly define the clause "posing waste problems" in Section 33 (12) in Bill 143. The phrase should not be placed in legislation until that has occurred and a clear definition can accompany it.

6 CONCLUSION

AMO appreciates the opportunity to address Bill 143 both with the Minister of the Environment and with the public hearings of the Ontario Legislature's Social Development Committee. However, it wishes to emphasize with both that since municipalities are the local level of government and because they are responsible for solid waste management, they should have been consulted before the provincial government introduced Bill 143 into the Ontario Legislature. The provincial government should adopt consultation with municipalities as a standard practice for all environmental legislation, policies and regulations which may be introduced and which will impact on municipalities. This consultation should take place before the legislation, policies or regulations are introduced.

AMO also recognizes that some action must be taken for the Region of Peel's landfill since its capacity will be filled before the end of June 1992. However, the two other municipalities cited in Bill 143 do not consider themselves to be in "crisis". AMO would thus prefer that the Minister now work with it on a new waste management act which would address the waste management and landfill problems faced by all municipalities - and not just three in the Greater Toronto Area. This act should replace the Environmental Assessment Act process for landfill sites and would apply equally and fairly to all Ontario municipalities.

In the event that the provincial government does not take this preferred course of action and instead proceeds with Bill 143, AMO has made recommendations for changes to Bill 143. These recommendations address a wide range of questions ranging from legislative authority to funding, and it is critical that they be settled before Bill 143 becomes law. However, AMO again stresses that it does not favor this latter route and it strongly urges the Minister of the Environment to take the time now to work in consultation with AMO to develop a proper waste management act which will serve both provincial and municipal governments well as they work with solid waste management in Ontario in the years to come.

SUMMARY OF RECOMMENDATIONS

RECOMMENDATION #1:

The provincial government should adopt consultation with municipalities as a standard practice for all environmental legislation, policies, and regulations which may be introduced and which will impact on municipalities. This consultation should take place before the legislation, policies or regulations are introduced.

RECOMMENDATION #2:

The provincial government should work with AMO to develop a waste management act, separate from the Environmental Assessment Act, which addresses solid waste management for all Ontario municipalities and which applies equitably and fairly to all Ontario municipalities.

RECOMMENDATION #3:

AMO is not convinced that a crisis exists in all of the three Greater Toronto Area sites identified in Bill 143 and, as such, it does not believe this legislation is thus warranted. AMO urges the Minister of the Environment to define what constitutes a "crisis" in waste management.

RECOMMENDATION #4:

The provincial government should not proceed with Bill 143 until the Ministry of the Environment and Ministry of Municipal Affairs' paper on statutory authority for municipalities: i) is presented to municipalities in early 1992, ii) has completed the consultation process, and iii) its issues have been resolved.

RECOMMENDATION #5:

The Ministry of the Environment should clarify the language in section 17 (4) so that it specifically states which municipality is being referred to in that section.

RECOMMENDATION #6:

The Ministry of the Environment should amend Section 23 (2) (k) of Bill 143 by adding "in the absence of suitable alternatives" at the end of the phrase and before "; and".

RECOMMENDATION #7:

In Section 26 of Bill 143, which repeals Section 29 of the Environmental Protection Act and substitutes a new Section 29, the Ministry of the Environment should replace the word "Director" with the word "Minister" in section 29 (1).

RECOMMENDATION #8:

If the Minister of the Environment exercises the powers noted in Section 26 of Part IV of Bill 143, which repeals Section 29 of the Environmental Protection Act and replaces it with Section 29 contained in Bill 143, the capacity used through the exercise of Section (29) (2) (b) must be replaced at no additional cost to the host municipality. The same principle should also be applied any time the powers are exercised - for any uses ranging from processing to the use of a municipality's landfill.

RECOMMENDATION #9:

In Section 26 in Part IV of Bill 143, which repeals Section 29 of the Environmental Protection Act and replaces it with Section 29 of Bill 143, the Ministry of the Environment should change the language of (29) (2) (c) so that it specifically applies only to an emergency situation.

RECOMMENDATION #10:

The Ministry of the Environment should delete the word "planning" from Section 33 (1) (d) (i).

RECOMMENDATION #11:

In Section 33 (1) (d) (ii) and (iii) of Bill 143, the Ministry of the Environment should:

a) amend the section to clarify that it can only set technical specifications for these tasks of discontinuing the systems and closing the sites; and

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In Section 13 (2) of Bill 143, the Minister of the Environment should use estimates provided by the municipality since the Ministry of the Environment does not yet have an accurate database of this information.

RECOMMENDATION #19:

The Ministry of the Environment should amend change Section 19 of Bill 143, the section dealing with Injurious Affection, in consultation with AMO and its member-municipalities to reflect municipal concerns.

RECOMMENDATION #20:

The Ministry of the Environment should work with municipalities to clearly define the clause "posing waste problems" in Section 33 (12) of Bill 143. The phrase should not be placed in legislation until that has occurred and a clear definition can accompany it.

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